inasmuch as the doctrine of waiver rests on the principle that innocent third parties should be protected. MAY, INSURANCE, 133b. The agent knew of the falsity, and in giving the policy acted outside the scope of his authority and in derogation of the right of his principal to his loyalty. The applicant must know the extent of the authority of the agent, and in such a case must be presumed to know that the agent is committing a fraud upon his principal by accepting what he knew to be a false representation. See *Galbraith* v. *Arlington Ins. Co.,* 12 Bush (Ky.) 29; *Hansen* v. *Amer. Ins. Co.,* 57 Iowa 741, where the same doctrine has been applied, there the fraud consisted of misrepresentation as to health and the use to which a building was put.

INSURANCE—VALIDITY OF CONTRACT.—X insurance company, doing business in Arkansas, issued a policy to Y, the policy being issued in Alabama, and valid there, but opposed to an Arkansas statute which forbade under penalty any company doing business in that state allowing an agent outside the state to issue policies on property situated in the state. After the property was destroyed by fire the surety company which signed the bond of X company was sued on the policy, and the contract was *held* enforceable by comity, despite the Arkansas statute, and the surety company was held for the amount of the policy. *Mass. Bonding & Ins. Co.* v. *Home Life & Accident Co. et al.* (Ark., 1915), 178 S. W. 314.

The weight of authority sustains the validity of the contract. *Lamb* v. *Bouser,* 14 Fed. Cas. 983; *State Mut. Fire Ins. Co.* v. *Brinkley Stave & Heading Co.,* 61 Ark. 1; *Conn. River Mut. Fire Ins. Co.* v. *Way,* 62 N. H. 622; *Hartford Steam Boiler Inspection & Ins. Co.* v. *Lasher Stocking Co.,* 66 Vt. 439; *French* v. *People,* 6 Colo. App. 311; *Columbia Fire Ins. Co.* v. *Kinyon,* 37 N. J. Law 33; *Northampton Mut. Live Stock Ins. Co.* v. *Tuttle,* 40 N. J. Law 476. Although the contrary doctrine is enforced in several states on the ground of public policy. *Rose* v. *Kimberly & Clark Co.,* 89 Wis. 545; *Buell* v. *Breese Mill & Grain Co.,* 65 Ill. App. 271; *Swing* v. *Munson,* 191 Pa. 582; *Cowan* v. *London Assur. Corp.,* 73 Miss. 321. The principal case rests the liability of the surety company on the ground that the penalty shows a manifestation of the legislature's purpose that the penalty should be exclusive of all the consequences of non-compliance. The contract in itself is innocent, and the statute does not assume to forbid such contracts, or to make them invalid without such compliance either to the corporation or to the policy holder. Thus the surety company becomes liable because its bond is conditioned on the prompt payment of losses arising by virtue of any policy on property within the state; to hold otherwise would be to say that the surety might be released from performance of its contract according to its terms, for the reason that the insurance company had failed to perform a duty that it owed to the state at large, but the non-performance of which could result in no prejudice to the surety company. The dissenting opinion claims that the surety cannot be held liable, as it is presumed that the surety in contracting, contemplated liability only on lawful transactions and such as could be reasonably anticipated,

and so cannot be deemed to have had a contract made outside the state in mind as a part of their suretyship. *Minneapolis Fire & Marine Mut. Ins. Co.* v. *Norman*, 74 Ark. 190; PINGREY, SURETYSHIP, 67. The case seems decided on the better principle, as the purpose of the penalizing statute is collateral to the purpose which is sought to be accomplished by the requiring of a surety, and the other interpretation would seem to be an inequitable ingraftment on the statute which provides for the surety.

INSURANCE—WAIVER OF PROVISIONS IN APPLICATION BY AGENT.—An agent of defendant insurance company visited the plaintiff and attempted to induce her to have her husband's life insured. On learning that the family had no money he stated that she could pay the premium by paying $1 per week and that her husband would be insured from the time of the first payment. In accordance with this agreement, the husband signed a written application for insurance which stated that the insurance should not begin until the first premium was paid, and also that the agent had no power to waive any condition contained in the application. The agent received the policy and collected the first payment of $1, and insured died before another payment was made. In an action on the policy, *held*, that the agent did not waive the condition which was precedent to the insurance taking effect. *Lasch* v. *New York Life Ins. Co.* (1915), 155 N. Y. Supp. 255.

The New York courts have held with but one exception (*Russell* v. *Prudential Ins. Co.*, 176 N. Y. 178) that the agent may waive a breach of condition at the inception of the policy, where the policy is delivered with the knowledge of the breach of condition, despite the provision in the contract against such a waiver. *Stewart* v. *Union M. L. Ins. Co.*, 155 N. Y. 257; *Ames v. Manhattan Life Ins. Co.*, 40 App. Div. 465, affirmed in 167 N. Y. 584; *Benjamin* v. *Palatine Ins. Co.*, 80 App. Div. 260, affirmed in 177 N. Y. 588. The *Russell* case holds that such a condition may not be waived, as the applicant is charged with knowledge of the contents of the application, and so knew that the policy could not take effect until the premium was paid. The legal effect of the application being a covenant between the applicant and insurer directly and not through the agent, the contract is to be enforced as clearly written. The principal case follows the reasoning of the *Russell* case and is in accord with the great weight of authority. *Northern Assur. Co.* v. *Grand View Bldg. Assn.*, 183 U. S. 308. The court attempts to distinguish the principal case from those holding the contrary doctrine by pointing out the difference in the lapse of time between the first payment and the death of insured, but the distinction seems unimportant inasmuch as the cases say that the basis of the rule is the prevention of fraud (*Wood* v. *Am. Fire Ins. Co.*, 149 N. Y., 382) and prompt action on the part of the company would be necessary in any event to prevent fraud, so that the case may be looked at as showing a tendency of the New York court to abandon the peculiar doctrine as to waiver of condition at the inception of the contract, and to follow the generally accepted doctrine.

JUDGMENT—LIEN SUPERIOR TO UNRECORDED DEED.—W conveyed land to plaintiff by deed; subsequent to the delivery of the deed, but prior to the